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NTSB Order No. EA-4208

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 5th day of July, 1994

DAVID R. HINSON,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-13037
v.)	
)	
DAVID R. KEARNEY,)	
)	
Respondent.)	
)	

OPINION AND ORDER

Respondent has appealed from the oral initial decision of Administrative Law Judge William E. Fowler, Jr., rendered on July 22, 1993, at the conclusion of an evidentiary hearing.¹ The law judge affirmed an order of the Administrator suspending respondent's airman certificate for 30 days for violating section

¹An excerpt from the hearing transcript containing the initial decision is attached. Respondent filed a brief on appeal; the Administrator filed a reply.

61.15(e) and (f) of the Federal Aviation Regulations ("FAR," 14 C.F.R. Part 61).² We deny the appeal and affirm the law judge's decision.

Respondent was convicted of driving under the influence of alcohol (DUI) on March 30, 1992, in the State of California, but failed to report the incident to the FAA's Security Division

²Actually, respondent can only be found to have violated section 61.15(e), as subsection (f) is merely a list of the possible consequences of failing to comply with subsection (e).

The regulation, in pertinent part, states:

§ 61.15 Offenses involving alcohol or drugs.

* * * *

(e) Each person holding a certificate issued under this part shall provide a written report of each motor vehicle action to the FAA, Civil Aviation Security Division (AAC-700), P.O. Box 25810, Oklahoma City, OK 73125, not later than 60 days after the motor vehicle action. The report must include-

- (1) The person's name, address, date of birth, and airman certificate number;
- (2) The type of violation that resulted in the conviction or the administrative action;
- (3) The date of the conviction or administrative action;
- (4) The state that holds the record of conviction or administrative action; and
- (5) A statement of whether the motor vehicle action resulted from the same incident or arose out of the same factual circumstances related to a previously-reported motor vehicle action.

(f) Failure to comply with paragraph (e) of this section is grounds for-

- (1) Denial of an application for any certificate or rating issued under this part for a period of up to 1 year after the date of the motor vehicle action; or
- (2) Suspension or revocation of any certificate or rating issued under this part.

Defined in section 61.15(c)(1), a motor vehicle action includes a conviction after November 29, 1990, for the violation of a state statute relating to the operation of a motor vehicle while under the influence of alcohol. As discussed infra, this applies to respondent.

within the next 60 days, as required by section 61.15. He maintains that he had decided in 1987 to "retire" from flying, did not have a current medical certificate at the time of his conviction and, as a consequence, could not legally have operated an aircraft.³

In June 1992, respondent began exercising the privileges of his airman certificate again. He disclosed his DUI conviction on his medical certificate application on June 25, 1992, and learned from the aviation medical examiner that it was material to the FAA.⁴ He received a new medical certificate, issued on August 12, 1992. According to respondent, he believed he had fulfilled

³Respondent had been a private pilot certificate holder since 1980.

⁴In a letter dated January 27, 1993, from respondent to Joseph Standell, Assistant Chief Counsel, FAA Aeronautical Center, respondent states that he had "no way of knowing the FAA reporting requirement, because it was enacted when I was not involved with flying." He continues:

I did not become aware of the requirement until I became involved again with flying in June of 1992. In fact, it was not until my June 25 medical application that I understood my conviction to be an issue, when it was brought to my attention by Dr. Boris Schmiegel, the designated medical examiner. After examining the FAR that was enacted when I was retired from flying, I **thought the information provided on the medical application was sufficient to meet the reporting requirement and that a separate statement was unnecessary.**

(Exhibit R-2.) Emphasis added.

From his statement, it appears that respondent, in fact, knew of the 61.15(e) reporting requirement before receiving the notification from the Security Division in November 1992. In any event, a certificate holder is charged with knowledge of the regulations that pertain to him.

his obligation to report the conviction to the FAA. By letter dated November 20, 1992, the FAA's Security Division advised respondent that he had failed to submit notification of his DUI conviction as required by FAR section 61.15. The subject action ensued.

Although he admits that he failed to report his DUI conviction to the Security Division, respondent asserts that he was unaware of the requirements of section 61.15 because, when he retired from flying in 1987, he had no intention of returning to flying and as a result, he did not keep apprised of changes in the FARs. Since his medical certificate expired on March 31, 1988, respondent asserts, he did not and could not legally have operated an aircraft at the time of his conviction. Therefore, he claims that his failure to timely report the DUI conviction did not impact air safety.⁵

The Administrator replies that since respondent remained a certificate holder, he had an obligation to be familiar with and comply with the FARs, irrespective of whether he was exercising the privileges of his airman certificate. This responsibility could only have been avoided had he voluntarily relinquished his certificate.

We agree that respondent's claim of ignorance is not a defense, as certificate holders are expected to be cognizant of

⁵We need not discuss respondent's argument that an inactive pilot should be treated no differently than a student pilot. Section 61.15 applies to present certificate holders, whether exercising the privileges of their certificates or not.

the regulations that apply to them. Administrator v. Smith, NTSB Order No. EA-4088 at 8 (1994). In Smith, a case decided after the instant case was briefed, the respondent also asserted that he had been unaware of the 61.15(e) reporting requirements. However, it was not a claim of "mere ignorance," and though we found the respondent had committed a technical violation, no sanction was imposed, given the unique circumstances of the case.

Specifically, Smith sought advice from a Flight Standards District Office about his obligation under the regulations to report a conviction for Driving While Intoxicated, but was given incomplete information.

By contrast, Respondent Kearney assumed that his decision to retire from flying (yet remain in possession of his airman certificate) released him from any obligation to keep informed of the regulations that pertained to him. Additionally, when he learned that his conviction had to be reported, as evidenced by his letter of January 27, 1993, he decided that the disclosure on the medical application rendered further notification to the FAA unnecessary. See supra, n. 4.

Respondent's claim that he was unaware of the 61.15 reporting requirements or had misinterpreted the extent of his reporting obligation is not exculpatory, since intent is not an element of the violation. As for the Administrator's decision to prosecute this case, it is not a subject appropriate for Board review.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied;
2. The Administrator's order and the initial decision are affirmed; and
3. The 30-day suspension of respondent's airman certificate shall begin 30 days after service of this order.⁶

HALL, Acting Chairman, LAUBER, HAMMERSCHMIDT and VOGT, Members of the Board, concurred in the above opinion and order.

⁶For the purpose of this order, respondent must physically surrender his certificate to a representative of the Federal Aviation Administration pursuant to FAR § 61.19(f).